

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

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| IN RE PHARMACEUTICAL INDUSTRY |) | MDL No.1456 |
| AVERAGE WHOLESALE PRICE |) | Master File No. 01-CV-12257-PBS |
| LITIGATION |) | Subcategory No. 06-CV-11337-PBS |
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| THIS DOCUMENT RELATES TO: |) | Judge Patti B. Saris |
| <i>United States of America ex rel. Ven-A-Care of</i> |) | |
| <i>the Florida Keys, Inc., et al. v. Boehringer</i> |) | |
| <i>Ingelheim Corporation, et al., Civil Action No.</i> |) | |
| 07-10248-PBS |) | |
| |) | |

**DECLARATION OF JAMES J. FAUCI
SUBMITTING EXHIBITS IN RESPONSE TO CORRECTED BOEHRINGER
INGELHEIM CORPORATION AND BOEHRINGER INGELHEIM
PHARMACEUTICALS, INC. LOCAL RULE 56.1 STATEMENT OF UNDISPUTED
MATERIAL FACTS IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT**

I, James J. Fauci, do hereby declare as follows:

1. I am an Assistant U.S. Attorney in the Office of the United States Attorney, District of Massachusetts. I am a member in good standing of the bar of this Court.
2. On behalf of the plaintiff United States of America, I am submitting with this declaration Exhibits in support of the United States's Opposition to Defendants Boehringer Ingelheim Corporation's and Boehringer Ingelheim Pharmaceutical Inc.'s Motion for Summary Judgment. In addition, I am submitting with this declaration Exhibits referenced in the Response of the United States to the Corrected Boehringer Ingelheim Corporation and Boehringer Ingelheim Pharmaceuticals, Inc. Local Rule 56.1 Statement of Undisputed Material Facts in Support of Their Motion for Summary Judgment.

3. The following exhibits are true and correct copies of the materials described:

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| 1. | Boehringer Ingelheim Slide-Show Presentation (RLI-AWP-00318092) |
| 2. | November 5, 2001 Press Release, "Roxane Laboratories, Inc. Announces the Availability of Generically Priced Ipratropium Bromide Nasal Spray" (RLI-AWP-00079524) |
| 3. | Exhibit 31 to the Deposition of Thomas Russillo, January 8, 2009 |
| 4. | June 7, 2002 Draft of Slide-Show titled, "Restructuring of the U.S. Business of Boehringer Ingelheim: Proposal to the Board of Managing Directors" (RLI-AWP-00114110) |
| 5. | November 14, 2008 Defendants Roxane Laboratories, Inc., n/k/a Boehringer Ingelheim Roxane, Inc.'s and Roxane Laboratories, Inc.'s Responses and Objection to Plaintiffs' Second Interrogatories |
| 6. | Deposition of Hermann Tetzner, October 19, 2004 (selected pages) |
| 7. | July 9, 1997 Meeting of the Board of Directors of Boehringer Ingelheim Corporation and Boehringer Ingelheim Pharmaceuticals, Inc. (BOEH02605823) |
| 8. | May 15, 2000 Minutes of the Joint Meeting of the Board of Directors Boehringer Ingelheim Corporation and Boehringer Ingelheim Pharmaceuticals, Inc. (BICJURIS0171) |
| 9. | October 1, 1999 Minutes of the Joint Meeting of the Board of Directors Boehringer Ingelheim Corporation and Boehringer Ingelheim Pharmaceuticals, Inc. (BICJURIS0190) |
| 10. | Deposition of Thomas Russillo, January 8, 2009 (selected pages) |
| 11. | Deposition of Judith Waterer, October 24, 2001 (selected pages) |
| 12. | Deposition of Robert Sykora, December 4, 2008 (selected pages) |
| 13. | Exhibit 3 to the Deposition of Sheldon Berkle, October 31, 2008 |
| 14. | Exhibit 2 to the Deposition of Sheldon Berkle, October 31, 2008 |
| 15. | Deposition of Sheldon Berkle, October 31, 2008 (selected pages) |
| 16. | Exhibit 4 to the Deposition of Sheldon Berkle, October 31, 2008 |
| 17. | Exhibit 5 to the Deposition of Sheldon Berkle, October 31, 2008 |
| 18. | Exhibit 27 to the Deposition of Sheldon Berkle, October 31, 2008 |

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| 19. | Deposition of Edward Tupa, November 10, 2005 (selected pages) |
| 20. | Deposition of Frederick Duy, December 16, 2008 (selected pages) |
| 21. | Exhibit 7 to the Deposition of Thomas Via, October 18, 2005 |
| 22. | October 5, 1995 Boehringer Ingelheim Pharmaceuticals, Inc. Board of Directors Meeting (BOEH02605554) |
| 23. | Exhibit 8 to the Deposition of Sheldon Berkle, October 31, 2008 |
| 24. | Exhibit 12 to the Deposition of Sheldon Berkle, October 31, 2008 |
| 25. | Deposition of Edward Tupa, January 31, 2003 (selected pages) |
| 26. | Exhibit 18 to the Deposition of Sheldon Berkle, October 31, 2008 |
| 27. | Exhibit 17 to the Deposition of Sheldon Berkle, October 31, 2008 |
| 28. | May 17, 1996 Email from James King to BIPI Sales Force, Re: Atrovent (I.B.) Solution (RLI-AWP-00319059) |
| 29. | February 6, 1998 Inter-office Memorandum from Jim King to Field Sales Force, Re: Roxane Labs Isoetharine (RLI-AWP-00334289) |
| 30. | Deposition of James King, December 3, 2004 (selected pages) |
| 31. | Exhibit 1 to the Deposition of Deborah Kutner |
| 32. | Exhibit 650 to the Deposition of Edward Tupa, January 31, 2003 |
| 33. | Deposition of Richard Feldman, November 18, 2005 (selected pages) |
| 34. | Deposition of Richard Feldman, November 17, 2005 (selected pages) |
| 35. | Deposition of Dawn Gordon, January 25, 2005 (selected pages) |
| 36. | Deposition of Robert Sykora, November 2, 2005 (selected pages) |
| 37. | Deposition of Mike Doan, December 2, 2005 (selected pages) |
| 38. | Deposition of Anthony Tavolaro, November 22, 2005 (selected pages) |
| 39. | August 28, 1996 Email, Re: August Business Review (RLI-AWP-00071306) |
| 40. | December 12, 1996 Email from Judith Waterer to John Powers, Re: Ipratropium Bromide UDV (RLI-AWP-0071136) |

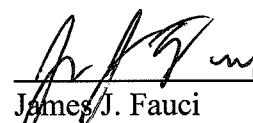
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| 41. | February 18, 1998 Memorandum from Keli Self to John Powers, Re: PREMIER Bid Analysis (RLI-AWP-00218289) |
| 42. | Exhibit 23 to the Deposition of Sheldon Berkle, October 31, 2008 |
| 43. | Exhibit 17 to the Deposition of Robert Sykora, December 4, 2008 |
| 44. | Exhibit 2 to the 30(b)(6) Deposition of James McIntyre, February 26, 2009 |
| 45. | 30(b)(6) Deposition of Roxane Laboratories, Inc., Roxane Laboratories, Inc. n/k/a Boehringer Ingelheim Roxane, Inc., Boehringer Ingelheim Pharmaceuticals, Inc., and Boehringer Ingelheim Corporation (James McIntyre), February 26, 2009 (selected pages) |
| 46. | October 13, 2004 Employee Bulletin from Robert Fromuth and Thomas Russillo (RLI-AWP-00107262) |
| 47. | Deposition of John Powers, February 4, 2003 (selected pages) |
| 48. | Exhibit 8 to the Deposition of Thomas Russillo, January 8, 2009 |
| 49. | April 7, 1997 Email from James King to Judith Waterer, Re: Attached Draft (BOEH04353260) |
| 50. | Exhibit 139 to the Deposition of Sheldon Berkle, January 27, 2005 |
| 51. | Deposition of Gregg Ciarelli, June 26, 2002 (selected pages) |
| 52. | 30(b)(6) Deposition of Roxane Laboratories (Gregg Ciarelli), July 25, 2007 (selected pages) |
| 53. | Deposition of Sheldon Berkle, January 27, 2005 (selected pages) |
| 54. | Deposition of James Rowenhorst, April 3, 2003 (selected pages) |
| 55. | Exhibit 14 to the Deposition of Jonathan Macey, May 19, 2009 |
| 56. | Deposition of Lesli Paoletti, November 9, 2004 (selected pages) |
| 57. | Deposition of Lesli Paoletti, July 26, 2007 (selected pages) |
| 58. | Deposition of Judith Waterer, November 28, 2005 (selected pages) |
| 59. | New product Introduction: Roxicodone (RLI-AWP-00119191) |
| 60. | December 6, 1999 Email from Patricia Wolf (on behalf of Werner Gerstenberg) to Walter Poerschmann, Re: Position Paper (BOEH02601793) |
| 61. | Deposition of Jonathan Macey, May 20, 2009 (selected pages) |

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| 62. | February 18, 1999 Roxane Laboratories, Inc. Unanimous Written Consent of Directors (BOEH04600281) |
| 63. | May 28, 1999 Roxane Laboratories, Inc. Unanimous Written Consent of Directors (BOEH04600295) |
| 64. | June 21, 2001 Minutes of the Joint Annual Meeting of the Board of Directors Boehringer Ingelheim Corporation and Boehringer Ingelheim Pharmaceuticals, Inc. (BICJURIS0119) |
| 65. | Exhibit 13 to the Deposition of James McIntyre, October 19, 2004 |
| 66. | Exhibit 21 to the Deposition of James McIntyre, October 19, 2004 |
| 67. | Exhibit 22 to the Deposition of James McIntyre, October 19, 2004 |
| 68. | Exhibit 15 to the Deposition of James McIntyre, October 19, 2004 |
| 69. | Exhibit 16 to the Deposition of James McIntyre, October 19, 2004 |
| 70. | Exhibit 17 to the Deposition of James McIntyre, October 19, 2004 |
| 71. | Exhibit 18 to the Deposition of James McIntyre, October 19, 2004 |
| 72. | Exhibit 20 to the Deposition of James McIntyre, October 19, 2004 |
| 73. | Exhibit 22 to the Deposition of Sheldon Berkle, October 31, 2008 |
| 74. | Exhibit 19 to the Deposition of James McIntyre, October 19, 2004 |
| 75. | Exhibit 23 to the Deposition of James McIntyre, October 19, 2004 |
| 76. | 2004 Roxane Laboratories, Inc Balance Sheet (BOEH046000613) |
| 77. | Exhibit 149 to the Deposition of Sheldon Berkle, January 27, 2005 |
| 78. | Exhibit 31 to the Deposition of Sheldon Berkle, October 31, 2008 |
| 79. | Intentionally Omitted |
| 80. | Exhibit 34 to the Deposition of Sheldon Berkle, October 31, 2008 |
| 81. | August 14, 2000 Email from Christine Ferrara to Frederick Duy, Re: Roxicodone 15/30mg Launch Plan (BOEH00236390) |
| 82. | Exhibit 37 to the Deposition of Frederick Duy, December 16, 2008 |
| 83. | Exhibit 39 to the Deposition of Frederick Duy, December 16, 2008 |
| 84. | Exhibit 40 to the Deposition of Frederick Duy, December 16, 2008 |

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| 85. | Exhibit 41 to the Deposition of Frederick Duy, December 16, 2008 |
| 86. | Exhibit 44 to the Deposition of Frederick Duy, December 16, 2008 |
| 87. | Exhibit 45 to the Deposition of Frederick Duy, December 16, 2008 |
| 88. | August 23, 1999 Email from Christine Ferrara to Richard Feldman and Aleisha Myer, Re: FW: Price Increase Documents signed by S. Berkle and W. Gerstenberg (BOEH01191121) |
| 89. | August 18, 1999 Email from Christine Ferrara to Rozeann Press, Re: Documents to be signed by S. Berkle and W. Gerstenberg (BOEH01191124) |
| 90. | November 8, 1999 Inter-office Memorandum from Pricing Committee to Sheldon Berkle and Werner Gerstenberg, Re: Recommended Pricing: Duraclon (BOEH00999676) |
| 91. | 2001 Memo from Christine Ferrara to Sheldon Berkle and Werner Gerstenberg, Re: Recommended BIPI/RLI Price Increases for Q1 2002 (BOEH01195990) |
| 92. | Exhibit 12 to the Deposition of Thomas Russillo, January 8, 2009 |
| 93. | Exhibit 24 to the Deposition of Thomas Russillo, January 8, 2009 |
| 94. | Exhibit 25 to the Deposition of Thomas Russillo, January 8, 2009 |
| 95. | Exhibit 26 to the Deposition of Thomas Russillo, January 8, 2009 |
| 96. | Exhibit 28 to the Deposition of Thomas Russillo, January 8, 2009 |
| 97. | Exhibit 10 to the Deposition of James Rowenhorst, October 7, 2005 |
| 98. | March 1, 2000 Email from Jim Heins to Judy Waterer, Re: CCP_release(RLI-AWP-00361156) |
| 99. | Deposition of Lesli Paoletti, November 30, 2005 (selected pages) |
| 100. | Deposition of Lesli Paoletti, September 20, 2005 (selected pages) |
| 101. | Deposition of Dawn Gordon, November 4, 2005 (selected pages) |
| 102. | Deposition of Thomas Via, October 18, 2005 (selected pages) |
| 103. | Deposition of Colin Carr-Hall, December 12, 2008 (selected pages) |
| 104. | Distribution Workshop (BOEH01301724) |
| 105. | Product Announcements and Reporting to Compendia (BOEH01335794) |

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| 106. | December 6, 1999 Letter from John Powers to Matt Partsch (NSC Healthcare, Inc.), Re: Special Contract Pricing Opportunity: Cafcit (RLI-AWP-00196259) |
| 107. | August 14, 2000 Email from David Laros to Christine Ferrara, Re: Roxicodone 15/30mg Launch Plan (BOEH00236395) |
| 108. | August 21, 2000 Roxane Laboratories, Inc. Unanimous Written Consent of Directors (BOEH04600330) |
| 109. | Exhibit 13 to the Deposition to Hermann Tetzner, October 19, 2004 |
| 110. | Declaration of Patrick Ormond |

I swear under the penalties of perjury that the foregoing statements are true and correct.



James J. Fauci
Assistant U.S. Attorney

Executed this 28th day of August, 2009